SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 469

HENRY L. DOHERTY & COMPANY, APPELLANT,

vs.

FRANK GOODMAN

APPEAL FROM THE SUPREME COURT OF THE STATE OF IOWA

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[fols. a & 1] Clerk's Certificate to transcript of record omitted in printing.

[fol. 2] **IN SUPREME COURT OF IOWA**

No. 42214

FRANK GOODMAN, Plaintiff-Appellee

v.

HENRY L. DOHERTY & COMPANY, Defendant-Appellant.

ORDER SETTLING RECORD—Filed Sept. 27, 1934

It is hereby ordered that the record hereto attached, numbered from page 1 to 51 inclusive, contains all the opinions, orders, records and proceedings in this action that are necessary and material upon the review of such opinion and order by the Supreme Court of the United States, and shall be certified by the Clerk of this Court as such and be by him transmitted to the Clerk of the United States Supreme Court.

Done at Des Moines, Iowa, this 27th day of September, 1934.

[illegible]hard F. Mitchell, Chief Justice of the Supreme Court of Iowa.

[File endorsement omitted.]

[fol. 3] IN SUPREME COURT OF IOWA

[Title omitted]

STIPULATION AS TO RECORD—Filed Sept. 27, 1934

It is hereby stipulated and agreed by the attorneys for the parties that the record hereto attached, numbered from pages 1 to 51 inclusive, contains all the opinions, orders, records and proceedings in this action that are necessary and material upon the review of such opinion and order by the Supreme Court of the United States and may be

certified by the Clerk of the Supreme Court of Iowa as the complete record of such proceedings and shall constitute full compliance with all requirements.

Fred. W. Lehmann, Jr., William B. Hurlburt, Harrison E. Spangler, Attorneys for Appellant.
Joseph I. Brody, Louis A. Parker, Clyde B. Charlton, G. E. Brammer, Attorneys for Appellee.

[File endorsement omitted.]

[fol. 4] [File endorsement omitted]

IN SUPREME COURT OF IOWA

[Title omitted]

PETITION FOR ORDER ALLOWING APPEAL AND APPROVING BOND—Filed Sept. 17, 1934

Comes now defendant-appellant herein, to-wit, Henry L. Doherty, sued herein under the name of Henry L. Doherty & Company and still specially appearing for the sole purpose of attacking the jurisdiction of the court, makes application to the court as follows:

This appellant considering himself aggrieved by the final decision of the Supreme Court of Iowa in this case, hereby asks that an appeal be allowed him to the Supreme Court of the United States, and that all proceedings in this Court, save only such as are necessary to complete said appeal be stayed pending the outcome of such appeal, and that the bond tendered herewith be approved as an appeal bond and as a supersedeas bond and as a bond for costs.

This defendant also files herewith a statement or brief which he will file with the Supreme Court of the United States showing that said court has jurisdiction to entertain this appeal.

Appellant, for grounds of his appeal, makes the following

ASSIGNMENT OF ERRORS

in the record and proceedings and final decision of this case by the Supreme Court of Iowa:

1. The Supreme Court of Iowa erred in holding that service of an original notice upon E. A. King at Des Moines,

Polk County, Iowa, gave the District Court of the State of Iowa, in and for Polk County, personal jurisdiction over the defendant-appellant, Henry L. Doherty, when the undisputed record showed said defendant was an individual [fol. 5] person, a resident and citizen of the State of New York and of the United States, a non-citizen and non-resident of the State of Iowa who had not been within the boundaries of the State of Iowa at any material time, although said Doherty maintained an office in Polk County, Iowa, in which said King was employed as agent of Doherty and the cause of action grew out of the business of said office.

2. The Supreme Court of Iowa erred in not reversing the decision of the trial court which overruled the special appearance of the defendant, Doherty.

3. The Supreme Court of Iowa erred in construing Section 11079 of the 1927 Code of Iowa so as to make it apply to defendants who were individuals, non-citizens and non-residents of Iowa, citizens and residents of other states of the Union and of the United States and who had never been within the boundaries of Iowa.

4. The Supreme Court of Iowa erred in holding that Section 11079 of the 1927 Code of Iowa, so construed, was not repugnant to any provision of the Constitution of the United States and was valid.

5. The Supreme Court of Iowa erred in failing to hold that Section 11079 of the 1927 Code of Iowa, so construed, denied to the citizens of each State, and to this defendant, a citizen of the State of New York, the privileges and immunities of the citizen in the several states, to-wit, the State of Iowa, and was repugnant to Section 2 of Article IV of the Constitution of the United States and therefore invalid.

6. The Supreme Court of Iowa erred in failing to hold that Section 11079 of the 1927 Code of Iowa, so construed, abridged the privileges and immunities of this defendant who was a citizen of the United States and was repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States and therefore invalid.

[fol. 6] 7. The Supreme Court of Iowa erred in failing to hold that Section 11079 of the 1927 Code of Iowa, so con-

strued, deprived this defendant of property without due process of law and was repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States and therefore invalid.

8. The Supreme Court of Iowa erred in that it held that the State of Iowa, by a legislative enactment, could extend the effect of its process beyond its own territorial limits to subject persons and property outside such limits to its judicial decisions.

9. The Supreme Court of Iowa erred when it, in effect, held that the State of Iowa could by any statute or by any form of service, subject the citizen and resident of another state, who had never been in Iowa, to the jurisdiction of Iowa when such citizen did not consent thereto.

For which errors this appellant, Henry L. Doherty, prays said judgment and decree rendered in this case under date of June 23, 1934, be reversed and that judgment be rendered in favor of this defendant-appellant.

Deacon, Sargent & Spangler, Lehmann, Hurlburt & Hossfeld, Attorneys for Defendant-Appellant.

[fols. 7-15] Bond on Appeal for $1,000.00, approved and filed Sept. 17, 1934, omitted in printing.

[fols. 16-18] IN SUPREME COURT OF IOWA

No. 42214

FRANK GOODMAN, Plaintiff-Appellee,

v.

HENRY L. DOHERTY & COMPANY, Defendant-Appellant.

ORDER ALLOWING APPEAL—Filed Sept. 17, 1934

Now on this 17th day of September, A. D., 1934, this matter came on for hearing on the application for an appeal to the Supreme Court of the United States by the defendant-appellant.

It is ordered that said appeal is hereby allowed and that the bond tendered with said application is hereby approved, and that all further proceedings in this court, save only such as are proper to complete the appeal are hereby stayed pending the outcome of such appeal.

Richard F. Mitchell, Chief Justice of the Supreme Court of Iowa.

[File endorsement omitted.]

[fol. 19] Citation in usual form, showing service on Frank Goodman, filed Sept. 17, 1934, omitted in printing.

[fol. 20] [File endorsement omitted]

IN SUPREME COURT OF IOWA

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Sept. 17, 1934

To the Honorable B. W. Garrett, Clerk of the Supreme Court of Iowa:

In the certified transcript of the record in the above entitled cause to be made and transmitted to the Supreme Court of the United States pursuant to an order allowing appeal, dated September 17, 1934, signed by the Honorable Richard F. Mitchell, Chief Justice of the Supreme Court of Iowa, kindly incorporate the following:

1. In each case where you incorporate papers filed in your office, show the date they were so filed.

2. The abstract filed by the appellant in your office, which abstract shows the record in the trial court and in this court, including:

(a) The petition of plaintiff
(b) The original notice
(c) The return of service on the original notice
(d) The Special Appearance of the defendant
(e) The stipulation of fact signed by the parties

(f) The order of the trial court overruling the special appearance and giving defendant time to plead;

(g) The judgment of the trial court.

(h) The recitals of the abstract as to service of notice of appeal and the certificate of the attorneys showing proper steps to give the Supreme Court of Iowa jurisdiction on appeal. You may omit the notice of oral argument and the cost certificate.

3. That part of appellant's argument starting on page 4 thereof, entitled "Assignment of Errors," and ending on page 5 thereof.

[fol. 21] 4. That part of appellant's argument starting on page 5 thereof entitled "Points and Authorities" and ending on page 7 thereof.

5. The opinion and order of the Supreme Court of Iowa in this case dated June 23, 1934.

6. The order or record of opinion of the Supreme Court of Iowa in this case dated June 23, 1934.

7. Stipulation settling bill of exceptions and record before Iowa Supreme Court.

8. Order settling bill of exceptions and record before Iowa Supreme Court.

9. The petition for appeal, the assignment of error and prayer for reversal included therein, the statement as to jurisdiction on appeal pursuant to Rule 12 of the United States Supreme Court filed therewith and the Acknowledgment of Service of all the foregoing.

10. The Order allowing appeal staying procedendo and approving bond.

11. Compliance with Rule 12 and acknowledgment of service thereon.

12. The Supersedeas Bond on appeal.

13. The citation and acknowledgment of service thereof.

14. This præcipe for transcript of record.

15. Stipulation settling record.

16. Order settling record.

17. Your own certificate to the record.

18. Will you also certify such other proceedings, if any there be, as may be necessary to enable you to certify that the transcript is a true and complete transcript of the record.

Lehmann, Hurlburt & Hossfeld, Deacon, Sargent & Spangler, Attorneys for Henry L. Doherty & Company.

Due, timely and proper service of the foregoing præcipe and receipt of copy thereof is hereby acknowledged at Des Moines, Polk County, Iowa, this 17th day of September, 1934.

Frank Goodman, by Brammer, Brody, Charlton & Parker, His attorneys.

[fol. 22] IN SUPREME COURT OF IOWA

[Title omitted]

STIPULATION AS TO RECORD—Filed Sept. 27, 1934

It is hereby stipulated and agreed by the attorneys for the parties that the record hereto attached, numbered from pages 22 to 51 inclusive, contains all the records and proceedings in this action up to and including the Opinion and Order of the Supreme Court of Iowa that are necessary and material upon the review of such opinion and order by the Supreme Court of the United States and may be certified by the Clerk of the Supreme Court of Iowa as the complete record of such proceedings and shall constitute full compliance with all requirements.

Fred. W. Lehmann, Jr., William B. Hurlburt, Harrison E. Spangler, Attorneys for Appellant. Joseph I. Brody, Louis A. Parker, Clyde B. Charlton, George E. Brammer, Attorneys for Appellee.

[File endorsement omitted.]

[fol. 23] IN SUPREME COURT OF IOWA

[Title omitted]

ORDER SETTLING RECORD—Filed Sept. 27, 1934

It is hereby ordered, that the record hereto attached numbered from page 22 to 51 inclusive, contains all the records and proceedings in this action up to and including the Opinion and Order of the Supreme Court of Iowa, that are necessary and material upon the review of such opinion and order by the Supreme Court of the United States, and

shall be certified by the Clerk of this Court as such and be by him transmitted to the Clerk of the United States Supreme Court.

Done at Des Moines, Iowa, this 27th day of September, 1934.

Richard F. Mitchell, Chief Justice of the Supreme Court of Iowa.

[File endorsement omitted.]

[fol. 24] Clerk's Certificate to transcript of record omitted in printing.

[fol. 25] RECORD

On the 5th day of July, 1933, the appeal from the judgment of the Polk County District Court was docketed in the Supreme Court of the State of Iowa.

On the 5th day of July, 1933, the appellant, Henry L. Doherty & Company, filed its abstract on such appeal showing as follows:

[fol. 26] IN DISTRICT COURT OF POLK COUNTY

PETITION—Filed July 31, 1931

For cause of action plaintiff states:

That the defendant is a trade name under which one Henry L. Doherty is doing business through his agents and representatives from his office in Des Moines, Iowa.

That on or about September 1st, 1929, an agent and representative of the defendant solicited the plaintiff to purchase fifteen (15) shares of Cities Service Company common stock at $51.50 per share and at that time the plaintiff entered into an agreement to purchase and pay for said stock, a copy of which agreement is marked Exhibit "A" attached hereto and made a part hereof, and pursuant to said agreement plaintiff paid to the defendant on September 1st, 1929, the sum of $112.50 and on October 7, 1929, paid him an additional sum of $55.00.

That said Cities Service Company common stock is a security within the provisions of Section 3 of Chapter 10

of the Session Laws of the 43rd General Assembly of the State of Iowa, being shares of stock in a corporation incorporated under the laws of some state of the United States other than the State of Iowa.

That on September 1st, 1929, the said defendant was engaged in business in the State of Iowa as a dealer or salesman of securities and dealing in securities and transactions not exempt under section 5 of Chapter 10 of the Session Laws of the 43rd General Assembly, and was not registered in the office of the Secretary of State of the State of Iowa, as provided by said Chapter 10 of said Session Laws of the 43rd General Assembly. That on or about July 16, 1931, this plaintiff elected to rescind said transaction and tendered to the defendant any right or thing of value received by him and offered to release and discharge the defendant from any obligations and/or duties owing to him arising under said contract. That said offer was in writing, a copy of which is marked Exhibit "B" [fol. 27] attached hereto and made a part hereof, and said tender has not been acceded to by said defendant and the plaintiff hereby renews and keeps said tender good.

Wherefore, plaintiff prays judgment against the defendant in the sum of $167.50, with interest at 6 per cent per annum from October 7, 1929.

(NOTE: No Exhibit "A" was attached to the Petition.)

EXHIBIT "B" TO PETITION

July 15, 1931.

Henry L. Doherty & Company, 317 Liberty Building, Des Moines, Iowa.

GENTLEMEN:

On September 1st, 1929, I agreed to purchase from you 15 shares of Cities Service Company Common Stock at $51.50 per share, a total of $772.50, on which I paid you on the 1st day of September, 1929, $112.50 and on October 7, 1929, an additional $55.00.

I do not care to go on with my purchase and I elected to rescind the same and demand cancellation of my note or contract and the return to me of the moneys paid with legal

interest, and I offer to return any right or thing of value received by me and to release and discharge you of any obligations and/or duties to me arising under said contract.

If this rescission is not acceded to by you, I shall begin action to enforce my rights, as I am advised that you had no authority to sell or offer for sale the above stock at the time of the transaction with me, and furthermore I was induced to purchase said stock as a result of fraudulent representation made to me by your agents.

Yours very truly, Frank Goodman, by Brammer, Brody, Charlton & Parker, His Attorneys.

[fol. 28] In District Court of Polk County

Notice of Filing of Petition—Filed Aug. 20, 1931

To the above named Defendant:

You are hereby notified that on or before August 28, 1931, there will be filed in the office of the Clerk of the District Court of the State of Iowa in and for Polk County, the petition of the plaintiff claiming of you the sum of $167.50 with interest at 6 per cent per annum from October 7, 1929, and for the costs of this action, including reasonable attorneys' fees, as money justly due this plaintiff on account of the rescission by this plaintiff of the one certain contract dated September 1st, 1929, by and between yourself and this plaintiff, and wherein the plaintiff agreed to purchase fifteen (15) shares of Cities Service Common stock.

For further particulars see the petition when filed.

Now unless you appear thereto and defend on or before noon of the second day of the September 1931 Term of said court aforesaid, which will be begun and holden on September 8, 1931, at the Polk County Court House in the City of Des Moines, Polk County, Iowa, default will be entered and judgment rendered thereon.

Dated at Des Moines, Iowa, this 23rd day of July, 1931.

[fol. 29] This Original Notice had proper caption and signature and attached to it was the following:

RETURN OF SERVICE

STATE OF IOWA,
County of Polk, ss:

I, H. J. Thoma, being first duly sworn on oath depose and say that the within notice came into my hands on the 29th day of July, 1931, and on the 30th day of July, 1931, I served the same on the defendant, Henry L. Doherty & Company, said Henry L. Doherty & Company being one and the same person as Henry L. Doherty who is engaged in business under the name and style of Henry L. Doherty & Company, by reading said notice to E. A. King, State Manager, and by delivering to him a true copy of the same, all done in Des Moines Township, Polk County, Iowa, the said Henry L. Doherty and/or Henry L. Doherty & Company being a non-resident of Polk County, Iowa, but having an office and agency in the said County of Polk for the transaction of his business, and the said E. A. King being an agent and Clerk employed by the said Henry L. Doherty in said office.

I further depose and say that I also served the within notice on the said Henry L. Doherty & Company by reading said notice to the Hon. G. C. Greenwalt, Secretary of State of the State of Iowa, and by delivering to him two copies of the same on the 31st day of July, 1931, in Lee Township, Polk County, Iowa.

H. J. Thoma.

Subscribed and sworn to in my presence by the said H. J. Thoma on this 3rd day of August, 1931.

J. W. Albert, Notary Public in and for Polk County, Iowa. (Seal.)

[fol. 30] IN DISTRICT COURT OF POLK COUNTY

SPECIAL APPEARANCE OF DEFENDANT—Filed Sept. 8, 1931

Comes now the defendant Henry L. Doherty & Company and appearing specially for the sole purpose of attacking the jurisdiction of the Court states:

1. That Henry L. Doherty is a resident and citizen of the State of New York and transacts much of his business under the name and style of Henry L. Doherty & Company.

2. That at no time material to this controversy has the said Henry L. Doherty been a citizen of Iowa, a resident of Iowa or within the state of Iowa.

3. That Henry L. Doherty & Company is not a corporation, is not a partnership and has no entity other than Henry L. Doherty.

4. That no original notice in this suit has ever been served on the said Henry L. Doherty.

5. That this defendant is informed and believes that plaintiff claims that service of original notice in this suit was made upon this defendant by serving such original notice upon Edward A. King as an alleged agent of the defendant in Des Moines, Iowa; that personal service upon a non-resident of a state cannot be had upon an agent and such a claimed service is invalid.

6. That the said Edward A. King at the time said notice was claimed to have been served upon him did not represent and never has represented this defendant for the purpose of personal service.

(Paragraphs 7, 8 and 9 of the special appearance are now immaterial and are omitted.)

10. Plaintiff seeks a personal judgment against the defendant and no original notice of this suit has ever been served on this defendant. No original notice has been served in any way which gives this Court jurisdiction over the person of this defendant; that this defendant should [fol. 31] not be required to appear further herein and this cause should be dismissed for lack of jurisdiction.

[fol. 32] IN DISTRICT COURT OF POLK COUNTY

STIPULATION AS TO CERTAIN FACTS—Filed Oct. 29, 1932

It is hereby stipulated by and between the parties hereto that for the purpose of determining the questions raised by the special appearance of the defendant, and for such purposes only, it is agreed that the following statements were true at all material times:

E. A. King, who is hereinafter referred to, is one and the same person as E. A. King mentioned in the return of

service on the original notice filed in this cause, and said notice was served as stated in the return thereto.

The defendant Henry L. Doherty & Company is one and the same person as Henry L. Doherty, an individual, the said Henry L. Doherty & Company being the name and style under which the said Henry L. Doherty was doing business in the State of Iowa, and Henry L. Doherty & Company had no existence or entity other than Henry L. Doherty, the individual.

Henry L. Doherty never was a resident of Polk County, Iowa, and never was a resident of the State of Iowa, and was and is now a resident and citizen of the State of New York.

In March, 1926, the defendant Henry L. Doherty & Company leased an office in the City of Des Moines, Polk County, Iowa, for the transaction of business in the State of Iowa, and said office was maintained in Des Moines, Iowa, by the defendant, and the defendant Henry L. Doherty & Company transacted business in said office.

E. A. King was employed by said defendant as District Manager for the State of Iowa, and in pursuance of that employment the said E. A. King took charge of said office in January, 1929, and was the District Manager for the defendant for the State of Iowa, and in charge of said office. In addition to E. A. King there was in said office at Des Moines, Iowa, clerks and also stock salesmen who worked out of said office; that the business carried on by [fol. 33] the defendant in said office was the sale in Iowa of corporate securities, and particularly the securities issued by Cities Service Company. E. A. King had supervision of all other employees in said Des Moines office, and also had supervision of like offices of the defendant which were maintained in Sioux City and Davenport, Iowa.

The name "Henry L. Doherty & Company" was on the door of said office, and Henry L. Doherty & Company was listed in the telephone directory and also in the city directory. The salary or compensation of the people working in said Des Moines office was paid direct from New York City by the defendant.

On the 1st day of September, 1929, a duly authorized agent of the defendant working out of said Des Moines office did at Des Moines, Iowa, solicit the plaintiff in this case, to purchase fifteen shares of the common stock of Cities Service Company, and at said time and place plain-

tiff did agree to purchase from the defendant fifteen shares of said stock and the defendant agreed to sell the same.

Henry L. Doherty employed E. A. King as his agent and authorized him to sell securities and supervise other employees, as aforesaid, and gave him no other express power or authority, save only such as pertained to such selling and supervision. Henry L. Doherty never expressly appointed E. A. King his agent for the purpose of being served with notice of suit, and never expressly agreed or consented that service upon said King should constitute service upon said Doherty. Said King had no power or authority in such respects save only such, if any, as arose by virtue of the Iowa statutes and the facts hereinbefore stipulated.

(The last five paragraphs of this stipulation and the exhibits they describe are now immaterial. These paragraphs and exhibits are omitted.)

[fol. 34] October 29, 1932, the Court, by A. A. Herrick, Judge, made the following:

IN DISTRICT COURT OF POLK COUNTY

ORDER ON SPECIAL APPEARANCE

Now on this 29th day of October, 1932, this matter came on for hearing on the special appearance of the defendant.

Plaintiff appeared by Brammer, Brody, Charlton and Parker, his attorneys, and defendant specially appeared for the sole purpose of attacking the jurisdiction of the court by Lehmann, Hurlburt & Hossfeld, his attorneys, and such special appearance was announced at the time it was made.

The court having heard the parties and being fully advised in the premises, finds the statements of fact contained in the stipulation on file herein and in the return of service of the original notice herein are true.

The court concludes that the foregoing facts show proper personal service of original notice upon the defendant, Henry L. Doherty on July 30, 1931, by the service upon E. A. King, so as to make said defendant personally subject to the jurisdiction of this court.

The court further concludes that the foregoing facts do not show proper personal service of original notice upon

the defendant, Henry L. Doherty, on July 31, 1931 by the service upon G. C. Greenwalt, so as to make said defendant personally subject to the jurisdiction of this court.

The court orders that the special appearance of the defendant should be, and the same hereby is overruled insofar as it attacks the jurisdiction of this court based upon the service upon E. A. King.

The court orders that the special appearance of the defendant should be, and the same hereby is sustained insofar as it attacks the jurisdiction of this court based upon the service upon G. C. Greenwalt.

Defendant is hereby given twenty days to plead or answer.

To all of which both parties except.

Done at Des Moines, Iowa, this 29th day of October, 1932.

[fol. 35] November 23, 1932, the court by John J. Halloran, Judge, entered the following:

IN DISTRICT COURT OF POLK COUNTY

JUDGMENT

Now on this 23rd day of November, 1932, this case came on for hearing on the application of the plaintiff for a default and judgment upon such default.

Plaintiff appeared by Brammer, Brody, Charlton & Parker, his attorneys. Defendant appeared not.

The Court having inspected the record herein and having heard the plaintiff finds:

Defendant heretofore made special appearance herein which this court overruled and has appeared no further. The time for pleading has elapsed and defendant has filed no further appearance and is in default.

The court further finds that judgment should be and hereby is rendered in favor of plaintiff and against defendant for $150.00 together with interest thereon at the rate of 6% per annum from September 26, 1929, and for fifty dollars attorney fees and the costs of this action; to all of which the court gives defendant an exception.

Done at Des Moines, Iowa, the 23rd day of November, 1932.

[fol. 36] IN DISTRICT COURT OF POLK COUNTY

NOTICE OF APPEAL

March 21, 1933, defendant perfected an appeal to the Supreme Court of Iowa by serving proper notice of appeal on the plaintiff and on the Clerk of the District Court of Polk County and filing a copy of the notice with said Clerk.

IN DISTRICT COURT OF POLK COUNTY

CERTIFICATE OF COUNSEL

We, the undersigned, attorneys for appellant, hereby certify that the above and foregoing abstract contains all the proceedings had and rulings and orders made in the course of the hearing of said cause, and that the same is a full, true and complete abstract of the entire record in said cause as made in said court.

Deacon, Sargent, Spangler & Hutchinson, Lehmann, Hurlburt & Hossfeld, Attorneys for Appellant.

Pursuant to Iowa practice, the appellant in his brief duly filed with the Supreme Court of Iowa, made the following Assignment of Errors and the following Points and Authorities and duly argued them to said court:

[fol. 37] IN SUPREME COURT OF IOWA

ASSIGNMENT OF ERRORS

I

The Court erred in holding that the service of the original notice upon E. A. King gave it personal jurisdiction over the defendant. In so holding, the court erred as follows:

1. The court erred in holding that Section 11079 of the Code of Iowa applies to or authorizes service upon a natural person or individual who is a non-resident of Iowa, and who at all times has been outside the boundaries of Iowa.

2. The court erred in failing to hold that Section 11079 of the 1927 Code of Iowa, if construed as authorizing service upon, and applied to, defendant, who is a citizen and resident of the United States and the State of New York, and who at all times has been outside the boundaries of Iowa, denies to defendant the privileges and immunities of citizens in the several states and is in violation of Section 2 of Article IV of the Constitution of the United States, and is invalid.

3. The court erred in failing to hold that Section 11079 of the 1927 Code of Iowa, if construed as authorizing service upon, and applied to, defendant, who is a citizen and resident of the United States and the State of New York, and who at all times has been outside the boundaries of Iowa, abridges the privileges and immunities of citizens of the United States to which defendant is entitled, and is in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and is invalid.

4. The court erred in failing to hold that Section 11079 of the 1927 Code of Iowa, if construed as authorizing servive upon, and applied to, defendant, who is a citizen and resident of the United States and the State of New York, and who at all times has been outside the boundaries of Iowa, deprives defendant of property without due process of law, and is in violation of Section 1 of the Fourteenth [fol. 38] Amendment to the Constitution of the United States, and is invalid.

5. The court erred in that it denied to the defendant, a citizen of the State of New York, the privileges and immunities of citizens in the several states, in violation of Section 2 of Article IV of the Constitution of the United States.

6. The court erred in that it abridged the privilege and immunities of defendant, a citizen of the United States, in violation of Section 1 of the 14th Amendment to the Constitution of the United States.

7. The court erred in that it deprived defendant of property without due process of Law, in violation of Section 1 of the 14th Amendment to the Constitution of the United States.

[fol. 39] IN SUPREME COURT OF IOWA

POINTS AND AUTHORITIES

I

Properly construed, section 11079 of the 1927 Code of Iowa applies only to service on residents of Iowa who maintain an office or agency in an Iowa county other than the county of their residence.

Code of 1851, Chapter 101, Section 1705.
Revision of 1860, Chapter 118, Section 2801.
Revision of 1860, Chapter 120, Section 2827.
Code of 1927, Section 11079.
Brooks v. Dun, 51 Fed. 138.

II

If construed to apply to citizens and residents of other states of the Union who maintain an office or agency in some county in Iowa the section when so construed and applied is without force or effect because no sovereign can by its own act, legislative or otherwise, give itself power or jurisdiction over either persons or things which are and have been beyond its boundaries. The jurisdiction of a sovereign extends to and stops at its territorial boundaries.

Story Conflict of Laws, Par. 539.
New York Life Ins. Co. v. Dunlevy, 241 U. S. 518, 60 L. Ed. 1140.

III

Iowa does not have jurisdiction by consent.

A. There was no express consent.

B. A citizen and resident of one State has the right to do business in another State and so doing is not an implied consent to submit his person to the jurisdiction of such other State.

Hess v. Pawloski, 274 U. S. 352, 71 L. Ed. 1091.
Flexner v. Farson, 248 U. S. 289, 63 L. Ed. 250.
Moredock v. Kirby, 118 Fed. 186.
Fisher & Van Gilder v. First Trust Bank, 210 Iowa 534.

[fol. 40] IV

If construed to apply to citizens and residents of other States who maintain an office or agency in Iowa, the section when so construed and applied is invalid because in conflict with the provisions of the Constitution of the United States.

A. It is in conflict with Article IV, section 2 of the Constitution of the United States, providing:

"The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

B. It is in conflict with section 1 of the Fourteenth Amendment to the Constitution of the United States, providing:

"All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the States wherein they reside.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; * * *"

Pennoyer v. Neff, 95 U. S. 714; 24 L. Ed. 565.
Raher v. Raher, 150 Ia. 511.
Ralya Market Co. v. Armour & Co., 102 Fed. 530.
Cabanne v. Graf, 87 Minn. 510; 92 N. W. 461.
Flexner v. Farson, 248 U. S. 289; 63 L. Ed. 250.
Fisher and Van Gilder v. Bank, 231 N. W. 670 (Iowa 1930).
Moredock v. Kirby, 118 Fed. 180.

[fol. 41] On June 23, 1932, the Supreme Court of Iowa duly entered the following Opinion and Order:

IN SUPREME COURT OF IOWA

This action was brought by Goodman against the defendant, Henry L. Doherty & Company, for damages. The action is predicated upon an illegal sale of securities made to the plaintiff by the duly authorized agent of Doherty. Service of original notice was made under the provisions

of section 11079 of the Code, upon the defendant's agent, who made the illegal sale. The defendant entered only a special appearance to challenge the jurisdiction of the court. As ground of his challenge he averred that he was a citizen and resident of the State of New York and that he had never at any time been within the borders of the State of Iowa. He also averred that he operated a business in Iowa under the trade name of Henry L. Doherty & Company and that he was the sole owner of such business; that the service of original notice upon his agent was at no time authorized by him and that such service was null and void as to him.

The district court overruled the special plea and held that the service upon the agent was good as against the defendant. No further appearance was made by the defendant and the court entered judgment against him as prayed in the petition.

From such judgment he has appealed.

Affirmed.

Deacon, Sargent, Spangler & Hutchison, Cedar Rapids; Lehmann, Hurlburt & Hossfeld, Des Moines, Attorneys for Appellant.

Brammer, Brody, Charlton & Parker, Des Moines, Attorneys for Appellee.

OPINION

EVANS, J:

Respective counsel for the contending parties unite in the statement that the case of Davidson v. Henry L. Doherty & Company, 214 Iowa 739, is determinative of the case at bar unless it be overruled herein. The cited case was an action by Davidson against the same defendant herein and was predicated upon a cause of action identical in its issues with that herein. The arguments of counsel [fol. 42] in both cases are substantially identical. The material facts were stipulated in each case. That the defendant was never personally within the State of Iowa, is conceded by the plaintiff. It is likewise conceded that the defendant personally established his office in Iowa and caused his name to be placed upon the office door and caused all business to be transacted in his name and not otherwise. The question raised is whether it is legally

possible by force of any statute of Iowa, for the courts of Iowa, to acquire personal jurisdiction of a non-resident who is doing business within the State of Iowa, if such non-resident has never in fact brought his person within the borders of the State. The argument of appellant herein is the fair equivalent of a petition for rehearing in the Davidson case. The legal questions now raised herein were all presented in the Davidson case and were very fully considered therein. Decision was attained by a divided court. The majority opinion necessarily prevailed. The reasons pro and con for the respective opinions are fully stated therein. That the questions thus considered are debatable and close, may be readily conceded. They have been so regarded by the judiciary of the country for many years. The ultimate question has been often approached, but never quite decided. A citation of the Davidson case as a precedent, is an all-sufficient argument for the decision of this case. The only door of argument open to the appellant is to seek the overruling of the opinion in the Davidson case. The fact that the decision was close and doubtful is urged by the appellant as a reason for its overruling. Such reason is not adequate. We were under the same duty of original decision whether the case were close and doubtful or otherwise. There are strong practical reasons why we should not be swift or willing to overrule a decision, which has been arrived at after full consideration and without inadvertence or misunderstanding. As a precedent it has become a practical verity; and no less such because it is doubtful, or deemed so. It became at once a beacon to trial judges and a rule for the decision of other cases. To treat [fol. 43] a question thus settled as still open, is to convert the beacon into a will-o'-the-wisp and to destroy quite, the force and effect of the law of precedent as a guide to the rights of litigants. And this is no less true even though the decision shall have been rendered by a divided court. Divided opinion in arriving at a decision is not uncommon or inappropriate. But after decision, the court ceases to be divided thereon and becomes unanimously obedient to the precedent. If the judicial rule were otherwise it would subject all precedents to a rediscussion and reconsideration with every change in the personnel of the court. Such a course would be quite intolerable. Since the decision of the Davidson case, there has been a substantial change of personnel in this court. If we were called upon to realign

our membership in the reconsideration of previous cases supposedly doubtful, it would necessarily result in putting the stamp of uncertainty upon every precedent. If a majority of us were not disposed to overrule the Davidson case, and should vote accordingly, we would, or might, still be a divided court and be still confronted with as many reasons for a later realignment to the contrary, as confront us now. Precedents are the stepping stones of the law in its goings. Once placed, they should not be lightly displaced. Such, broadly, is the reason why an appellate court consents to the overruling of a prior decision only in a very exceptional case. It will be soon enough to overrule this precedent, if and when, superior authority so rules.

Obedient thereto, the judgment appealed from is accordingly affirmed.

Affirmed.

CLAUSSEN, C. J., STEVENS, ALBERT, ANDERSON, KINTZINGER, DONEGAN, J. J., concur.

[fol. 44] IN SUPREME COURT OF IOWA

42214

FRANK GOODMAN, Appellee,

vs.

HENRY L. DOHERTY & COMPANY, Appellant

DISSENTING OPINION

MITCHELL, J., dissenting:

I was not a member of the court at the time the opinion in Davidson vs. Henry L. Doherty & Company, reported in 214 Iowa, 739, was decided. Had I been, I would have joined in the dissenting opinion filed by the late Justice Morling.

I concur in the dissenting opinion of Justice Kindig.

IN SUPREME COURT OF IOWA

42214

FRANK GOODMAN, Appellee,

vs.

HENRY L. DOHERTY & COMPANY, Appellant

DISSENTING OPINION

KINDIG, J., dissenting:

I am unable to agree with the result reached by the majority in this case, as I was unable to agree with the result reached by the majority in Davidson v. Henry L. Doherty & Company, 214 Iowa, 739.

[fol. 45] It is the theory of the majority that the Davidson case decides the present controversy, and that the rule of stare decisis precludes a dissent at this time. The rule of stare decisis would control were the controversy here one to be finally determined by this court, but a federal constitutional question is involved. Therefore, the judgment of this court is not final. A former decision of this court does not make a result constitutional if, in fact, the judgment which brings about such result is in conflict with the Constitution of the United States.

Under the circumstances of this record, it is my belief that the courts of Iowa have no constitutional power to render a judgment in personam against the appellant, Henry L. Doherty, for the reason that he has not been served with notice of the suit within this State. Doherty has not been present in the State, although he conducted business here through an agent. He is a resident of New York State, and a non-resident of the State of Iowa. His agent in Iowa had no contractual authority to accept, on his behalf, the service of the notice of suit in this State; nor did such agent, because of contract, constitute a person upon whom substituted service of the notice of suit could be made upon Doherty.

Section 11079 of the 1931 Code of Iowa, relied upon by a majority, does not purpose to make the appointment of an agent a prerequisite to Doherty's right to do business in this State. That section contains the following provi-

sions: "When a corporation, company, or individual has, for the transaction of any business, an office or agency in any county other than that in which the principal resides, service may be made on any agent or clerk employed in such office or agency, in all actions growing out of or connected with the business of that office or agency." It was said by this court in Davidson v. Doherty & Co., 214 Iowa, 739, supra, that the foregoing section gave Davidson the right to sue Doherty in Iowa by serving the notice of suit on Doherty's Iowa agent in Polk County.

[fol. 46] Consequently, if Doherty's agent in Iowa possessed the power to be served with an original notice of a suit on Doherty, such power must have arisen through contract or statute. But such contract did not exist. If, on the other hand, section 11079, relied upon by the majority, contrary to its terms attempts, by some theory or other, to make the appointment of an agent who can be served with notice of suit in Iowa a prerequisite for Doherty's right to do business in this state as an individual, then the same becomes unconstitutional because under the Federal Constitution the State of Iowa has no right to render personal judgment against a non-resident person not properly served with notice in this state. Flexner v. Farson, 248 U. S. 289, 63 L. Ed. 250. See also Hess v. Pawloski, 274 U. S. 352, 71 L. Ed. 1091. Before the adoption of the Federal Constitution, each state, as is well known, was an independent nation, theoretically, at least, possessing all the powers and prerogatives of any independent nation. When the Federal Constitution was adopted, these free and independent states did not surrender all their powers to the Federal Government, but only those expressly or impliedly named in or prohibited by the Federal Constitution. Other powers of the states were retained by them. See the Tenth Amendment to the Constitution of the United States. So, one state has no power over the citizens of another state, except as provided by the Federal Constitution. Prior to the adoption of the Federal Constitution, a citizen of one state could not, through a court action, acquire jurisdiction over a citizen of another state except by going into the foreign state. Likewise, under the Constitution, a citizen of one state cannot, through a court action, acquire jurisdiction of a citizen — another state without going into that state, except as provided by the Constitution of the United States.

The suit in question does not involve an action in rem growing out of an attachment or other process on Doherty's property within the State of Iowa. Moreover, the suit in [fol. 47] question does not involve a statute of the State of Iowa passed under its police power. No doubt, under the Securities Act, the State of Iowa could require Doherty, as a prerequisite to his doing business in Iowa, to appoint an agent upon whom substituted service on the principal could be made in Iowa. That authority exists in Iowa because of its police power. As said before, however, the police power of Iowa is not involved in section 11079 of the 1931 Code. Nor is this a case like that involved in Hess v. Pawloski, 274 U. S. 352, supra, and like cases. There the non-resident, by operating his automobile in a non-resident state, consented that the registrar of the foreign state would thereby be constituted an agent for the non-resident automobile driver, upon whom notice of suit for a tort growing out of the operation of the automobile in the foreign state might be served. Plainly, however, this authority of the foreign state is based upon the police power of that state, including the power to regulate its own highways. Furthermore, in the highway case just contemplated, the defendant actually was in the foreign state, and while there committed the tort which gave rise to the court action.

At this juncture, we must not confuse the law applicable in the case at bar with the law relating to the service of notice on foreign corporations. A corporation, being an artificial person, is by fiction considered to be within the state when it transacts business therein. Limitations may be made a prerequisite which must be met by the foreign corporation before it can enter a state. That is true even though the same prerequisite could not be required of an individual before entering the state. There must be no confusion, therefore, when the law applicable to the case at bar is compared with the law relating to the service of notice on foreign corporations. A clear distinction exists between the two principles of law. So, in the case at bar it is manifest that the district court in Iowa did not obtain [fol. 48] jurisdiction to render a personal judgment against the appellant Doherty.

For the sake of brevity, I adopt and add hereto by this reference the dissenting opinion written by the late Mr.

Justice Morling in the case of Davidson v. Henry L. Doherty & Company (214 Iowa, 739), supra.

[fols. 49 & 50] IN SUPREME COURT OF IOWA

42214

FRANK GOODMAN

vs.

HENRY L. DOHERTY & Co., Appellant

Appeal from Polk District Court.

JUDGMENT—June 23, 1934

In this cause, the Court being fully advised in the premises, file their written opinion affirming the judgment of the District Court.

It is therefore considered by the Court that the judgment of the Court below be, and it is hereby, affirmed, and that a writ of procedendo issue accordingly.

It is further considered by the Court that the appellant pay the costs of this appeal, taxed at $—— and that execution issue therefor.

[fol. 51] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION AS TO PRINTING RECORD—Filed Oct. 17, 1934

Comes now Appellant, defendant below, and adopts his Assignments of Error heretofore filed herein and his Assignments of Error and Points and Authorities heretofore filed with the Supreme Court of Iowa, and a part of the record herein, as his statement of the points to be relied upon, and represents that the whole of the record as filed is necessary for consideration of the case.

Fred. W. Lehmann, Jr., William B. Hurlburt, Harrison E. Spangler, Attorneys for Appellant.

Service of the foregoing statement and receipt of copy thereof is hereby acknowledged. All done at Des Moines, Polk County, Iowa, this 17 day of September, 1934.

Joseph I. Brody, Louis A. Parker.

[fol. 52] [File endorsement omitted.]

Endorsed on cover: File No. 39,097. Iowa Supreme Court. Term No. 469. Henry L. Doherty & Company, Appellant, vs. Frank Goodman. Filed October 17, 1934. File No. 469, O. T., 1934.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934.

No. 469

HENRY L. DOHERTY & COMPANY,

Appellant,

vs.

FRANK GOODMAN.

STATEMENT OF JURISDICTION OF UNITED STATES SUPREME COURT ON APPEAL.

A.

Federal Statutes Giving Jurisdiction.

The Act of February 13, 1925, Chapter 229, Section 1, 43 Stat. 937, Judicial Code Section 237, 28 U. S. C. A. Section 344 provides:

> "(a) A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, • • • where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution • • • of the United States, and the decision is in favor of its validity may be reviewed by the Supreme Court upon a writ of error."

Paragraph (b) of the same statute provides for similar review of such cases by certiorari and paragraph (c) provides that seeking writ of error when certiorari was the correct procedure shall not prevent a review on the merits just as if certiorari had been actually sought.

The Act of January 31, 1928, Chapter 14, 45 Stat. 54, as amended by the Act of April 26, 1928, Chapter 440, 45 Stat. 466; U. S. C. A. Title 28, Sections 861a and 861b abolish writs of error and provide that all relief theretofore obtainable under writ of error can thereafter be obtained by appeal, and make the statute regulating writs of error applicable to appeals.

B.

The State Statute Involved.

Section 11079 of the 1927 Code of Iowa reads:

> "*Actions arising out of agency.* When a corporation, company, or individual has, for the transaction of any business, an office or agency in any county other than that in which the principal resides, service may be made on any agent or clerk employed in such office or agency, in all actions growing out of or connected with the business of that office or agency."

And, the present case challenges its validity on the grounds that it is repugnant to the Constitution of the United States.

C.

The Decision of the Supreme ourt of Iowa and Date of Application for Appeal.

The Supreme Court of Iowa, the highest court of the State, rendered a final decision in favor of the validity of the statute on June 23, 1934, and the accompanying petition for appeal is presented on the 17th day of September, 1934, less than three months after the decision.

D.

The Nature of This Case.

While the caption of the petition names the defendant as Henry L. Doherty & Company, it is fully admitted by all parties that this is but the trade name under which Henry L. Doherty did some of his business, and that Henry L. Doherty, the individual, is the one and only defendant.

Henry L. Doherty is an individual, a citizen and resident of the State of New York and of the United States. He is neither a resident nor a citizen of Iowa. So far as is material, he was never present in person within the boundaries of Iowa.

Plaintiff sought a personal money judgment against Henry L. Doherty and asked no other relief.

Henry L. Doherty maintained an office in Des Moines, Polk County, Iowa. E. A. King was an agent employed in this office; the cause of action grew out of the business of the office.

In Iowa, actions are commenced by serving an "original notice." This is the step by which our courts acquire jurisdiction.

An original notice addressed to the defendant was served on E. A. King, the return of service stating that it was served

> "on the defendant Henry L. Doherty & Co., said Henry L. Doherty & Co. being one and the same person as Henry L. Doherty who is engaged in business under the name and style of Henry L. Doherty & Co. by reading said notice to E. A. King, State Manager * * * All done in Des Moines township, Polk County, Iowa, said Henry L. Doherty and/or Henry L. Doherty & Co. being a non-resident of Polk County, Iowa, but having an office and agency in said County of Polk for the transaction of his business and the said

E. A. King being an agent and clerk employed by the said Henry L. Doherty in said office."

Plaintiff brought no attachment, garnishment, libel or other *in rem* proceedings. The service shown by this return is the sole and exclusive basis of all jurisdiction claimed.

The defendant Doherty filed a special appearance for the sole purpose of attacking the jurisdiction of the court as provided by Section 11088 of the Code of Iowa, reading:

> "*Special Appearance.* Any defendant may appear specially for the sole purpose of attacking the jurisdiction of the court. Such special appearance shall be announced at the time it is made and shall limit the party to jurisdictional matters only and shall give him no right to plead to the merits of the case."

The trial court overruled the special appearance, and gave defendant time to plead. Pleading under Iowa practice waives all right to question jurisdiction. Defendant failed to plead and final judgment by default was rendered against defendant. Defendant appealed to the Supreme Court of Iowa and this Court sustained the action of the trial court.

In the trial court and on the appeal to the Supreme Court of Iowa, defendant raised two main points:

First. Properly construed, Section 11079 applied only to individual principals who resided in one county in Iowa and had an office in another county in Iowa, and did not apply to individual principals who resided in some county in, and were citizens of, some State other than Iowa. Both the trial court and the Supreme Court of Iowa held that the section applied to individual principals who resided in and were citizens of a State other than Iowa.

Second. Defendant raised the point that if the section was construed to apply to principals who resided in and

were citizens of some State other than Iowa, then the Section was repugnant to Section 2 of Article IV of the Constitution of the United States, in that it abridged the privileges and immunities of the citizens of the several States, and was also repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States in that it was a State law which abridged the privileges and immunities of citizens of the United States and deprived a person of property without due process of law.

Both the trial court and the Supreme Court of Iowa held against defendant on the issues thus raised. Both courts held that Section 11079 was not repugnant to any provision of the Constitution of the United States, was a valid statute and that service upon an agent pursuant to its terms gave an Iowa court full personal judgment over the person of a non-resident who was a citizen of another State. As a result on the appeal the Iowa Supreme Court sustained the overruling of the special appearance and affirmed the personal judgment against Doherty.

The Present Appeal.

On appeal to the United States Supreme Court, we are bound by the interpretation put upon the Iowa Statute by the Supreme Court of Iowa, and we present only the constitutionality of the statute, Section 11079.

The jurisdiction of the Supreme Court of the United States to pass upon the constitutionality of statutes whereby a State seeks to make non-residents subject to its jurisdiction is shown in a long line of all too well known cases.

In our support we cite:

Story Conflict of Laws, Par. 539;

Pennoyer v. *Neff*, 95 U. S. 714, 24 L. Ed. 565;